IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 9575 of 2004

Between:

Contec Syndicate Private Ltd, Rep. by its Managing Director,
Sri V. Nagabhushana Rao S/o V.S.N. Benarji, Aged 32 yrs, R/o 905, Street No.8, F-24,
Sainath Apartments, Venkataramana Colony, Khairatabad, Hyderabad.

..... PETITIONER

AND

1 The Government of A.P., rep. by its Special Chief Secretary,
Panchayat Raj, Secretariat, Hyderabad.
2 The Chief Engineer (RWS), Panchayat Raj, SRTGN Bhavan,
Erramanzil Colony, Hyderabad.
3 The Superintending Engineer (RWS), Panchayat Raj, Vijayawada, Krishna District.
4 M/s V.B. Constructions, Rep. by its Managing Partner Sri B.V. Balarama Raju, 8-2-293/K/90, Kamalapuri Colony, Phase-III, Hyderabad-73.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in accepting the tender submitted by the 4th respondent in response to the tender notice No. 24/03-04 dated 19-2-2004 for the work ie., PWS scheme to Avanigadda for improvements to existing summer storage tanks, pipe lines, sumps and OHSR etc, for Avanigadda Drinking Water Project in Krishna District and consequently direct the respondents to accept the bid submitted by the petitioner in response to the tender No. 24/03-04 dated 19-2-2004.

For the Petitioner: MR.T.RAJENDRA PRASAD, Advocate

For the Respondent Nos. 1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEV

For the Respondent No.4: Sri U.Ramanjaneyulu, Advocate

The Court made the following :

ORAL ORDER:

In response to the tender notice inviting quotations for water supply scheme called as PWS scheme to Avanigadda, the petitioner as well as respondent 4, submitted their tenders apart from another tenderer. As per Notice Inviting Tenders (NIT), the intending bidders who are desirous of participating in e-procurement shall submit their technical bid, price bids etc., in the standard formats prescribed in the Tender Documents Displayed at e-market. The bidders should upload the scanned copies of all relevant certificates, documents. Last date for submission of tenders was 9-3-2004. Pre-qualification bid will be opened on 10-3-2004 and the price bid on 15-3-2004. The Government of Andhra Pradesh in G.O.Ms.No. 195 Panchayat Raj & Rural Development (Progs.II) Department dt. 10-5-1999 with a view bring the simplification of procedure, greater transparency and to ensure better quality of works introduced a comprehensive reforms streamlining and standardizing the procedure for calling tenders and award contracts. As per Cl. 4.02.1 of the Annexure to the said GO, if contract value of the public works is above 100 lakhs, tender committee will finalize the tenders. As per Cl.4.02.2, tenders for the works costing more than Rs.1 crore will be referred to tender committee along with technical bid evaluation and price bid evaluation by the Superintending Engineer and submitt to the concerned Chief Engineer/ENC (Panchayat Raj) as per G.O.Ms.No.268 PR & RD (Prog.II) Department dt. 3-9-2003 who in turn forward the same for consideration by the tender committee which shall scrutinize the tenders submitted by Engineer-in-Chief/Chief Engineer in accordance with the conditions stipulated in NIT and the tender document. In case of any ambiguity, the decision taken by the tender committee shall be final. In the light of Cl.12.3 of NIT, which contemplates that the technical bid will be opened on the date notified for opening the tenders in the tender notice and bid document will be examined. The evaluation of the technical bid will be finalized with the particulars furnished in the technical bid and successful tenderer in technical evaluation will be eligible for opening of the price bid. C. 12.4 contemplates furnishing information about date and time of opening of price bids of all eligible tenderers. Cl.12.6 envisages rejection of the tender. Sub-clause (ii) of Cl.12.6 clearly envisages that if the eligibility and qualification criteria are not in accordance with sub-clause tender shall be rejected. Sub-clause (iv) of

Cl.12.6 also envisages that if self declaration to the effect of genuine of certificates furnished by him and regarding history of litigation and criminal cases pending against him/her is not enclosed, tender shall also be rejected. In the light of the above conditions, the third respondent who opened the pre-qualification bid on the specified date held that the fourth respondent, namely, M/s. V.B. Constructions is not qualified to open the financial bid for the following reasons:

1. The uploaded certificates are not attested by the Gazetted Officer.

2. Two experience certificates in respect of the works.

   a. Providing CPWS scheme to A.V.Nagaram and other habitations.

   b. Construction of OHSR at K.P.Palem and Modi are not countersigned by Superintending Engineer, remaining experience certificates produced by the tenderer are counter signed by Superintending Engineer.

3. The contractor has uploaded the information for the statement IV b) works for which tenders already submitted as Nil statement. But the tenderer Contec Syndicate Private Limited has represented that the VB Constructions had submitted the tender for CPWS Scheme to Gollapalem and other habitations in East Godavari District on 8-2-2004. The same has been confirmed through phone from Superintending Engineer, RWS Circle Office, Kakinada. Copy of representation of Contec Syndicate Private Limited is herewith enclosed.

4. The Check slip to accompany the tender (Annexure-I) was not uploaded. As such their tender is not qualified to open the price bid."

In view of disqualification of the fourth respondent on evaluation of technical bid, the price bid of the petitioner was opened on 15-3-2004, who quoted the rate at 2.99 % excess over estimated contract value. Accordingly, the third respondent submitted the evaluation of technical bid, financial bid of the petitioner and another to the second respondent for taking further action. The second respondent after extracting the reasons for disqualification of the fourth respondent by the third respondent, submitted the tender of the petitioner to the Tender Committee. In the meanwhile, the fourth respondent through their letter dt. 17-3-

2004 requested the second respondent-Chief Engineer (RWS) Panchayat Raj, Hyderabad to reconsider for opening of their financial bid. The third respondent forwarded the same to the tender committee in the light of the guidelines issued in G.O.Ms.No.195 dt. 10-5-1999 and G.O.Ms.No.268 dt. 3-9-2003. On such reference, the tender committee in its meeting held on 5-5-2004 reviewed the tender of the petitioner as well as the fourth respondent and opined that the reason given by the third respondent is not substantiating with respect to the tender conditions and requested the Chief Engineer, RWS to address CI India Limited to explore the possibility of open the price bid of the fourth respondent and after getting the reply from CI India Limited, the tenders of Avanigadda scheme will be decided. In the light of the directions issued by the Tender Committee, price bid of the fourth respondent was opened on 13-5-2004 and found that the tender submitted by the fourth respondent is 2.71 % excess as against the petitioner's 2.99 % excess. After opening the same, the matter was referred to Tender Committee for its examination. Tender Committee in its meeting held on 21-6-2004 awarded the contract work in favour of the fourth respondent since the rate quoted by the fourth respondent is lowest one. Questioning the same, the present writ petition has been filed and obtained interim direction not to enter into the agreement if not already entered.

The third respondent filed a counter-affidavit opposing the writ petition stating that as per tender condition No. 9.1.f of Vol.I for enclosed certificates with tender schedule self attestation is enough and as per tender condition No. 9.2 of Vol.I, for works on hand, self declaration of the bidder is enough. Further check slip need not be accompanied in "e" procurement as per Cl.(x) under eligibility criteria of NIT. Tender of Gollapalli work in East Godavari District was cancelled on 24-2-2004 and recalled again vide tender notice dt. 24-2-2004.

Learned counsel for the petitioner strenuously contends that self attestation is necessary to see that petitioner has uploaded the documents and certificates and same cannot be dispensed with as per Cl.9 of eligibility and qualifying criteria of NIT, which requires that the tenderer should enclose certificate issued by the Engineer in Chief and said certified has not been attested as contemplated. Similarly the Contractor who has uploaded the information for the statement IV b) works for which tenders already submitted as Nil statement. Whereas the fourth respondent while submitting his tender suppressed the information with regard to the Gollapalem works. Check slip to accompany the tender was not uploaded and was not submitted in the required proforma as per NIT. In view of the same, the third respondent rightly disqualified the fourth respondent for opening of the financial bid. As per

check slip annexure I of check slip to accompany tender, all photocopies of the certificates shall be self attested by tenderer and all experience certificates shall be issued by an officer not below the rank of Executive Engineer and countersigned by the next higher authority. In the absence of any experience certificate attested and submitted by the fourth respondent, he is not qualified to open the financial bid. No reasons for review were assigned by the tender committee except stating that the fourth respondent's financial bid may be opened, which is liable to be set-aside.

Per contra, learned Government Pleader for Panchayat Raj contends that cogent reasons were given by the second respondent in his report which clearly indicates that the fourth respondent is not qualified for opening of the financial bid. When once the value of the work is more than one crore, then only the Tender Committee evaluate the tenders and can take a decision. In the absence of any mala fides attributed to the tender committee, the fourth respondent who is the lowest tenderer was rightly selected for awarding work, which do not suffer from any irregularity.

Sri U.Ramanjaneyulu, learned counsel for the fourth respondent submits that the third respondent cannot disqualify the fourth respondent's tender and it is only the tender committee, which is competent but not otherwise as per Cl.4.02 of the annexure-I to G.O.Ms.No.195 dt.10-5-1999.

In view of the above rival contentions, the only point that emerges for consideration is whether the third respondent is justified in disqualifying the tender of the fourth respondent and if so tender committee is justified in accepting the tender of the fourth respondent directing to open the pre qualification bid.

It is not in dispute that the third respondent who has evaluated the tenders submitted his report to the second respondent-Chief Engineer, who in turn forwarded his report to the Tender Committee where contract value of the work is more than one crore. In the tender condition of NIT, the procedure for submission of bids is clearly stated in Cl. 9.1.f of the Volume-I, which clearly states that all enclosed documents with tender schedule should be self attested. Whereas 9.2 envisages that statement showing the value of existing commitments and ongoing works as well the stipulated period of completion remaining for each of the works listed shall be self attested. In view of the same, the ground No.1 on which the fourth respondent's tender was disqualified for opening the price bid by the third respondent is erroneous and contrary to tender conditions of NIT.

Coming to the second ground on which tender of the fourth respondent was disqualified is only on the ground that he submitted the tender to the Gollapalem works on 8-2-2004 which has been confirmed but the same has been cancelled on 24-2-2004 and the same was not disclosed. Even the true reading of the cl.9.2 which contemplates that tenderer has to show the value of the existing commitments and on going works as well the stipulated period of completion remaining for each of the works listed, unless the tender of the respondent No.4 accepted and entered into an agreement it cannot be said that it is an existing commitment and on going work, which tenderer has been suppressed. In view the same, disqualifying the fourth respondent for opening of price bid on the said ground cannot be sustainable.

Coming to the last ground on which, the tender of the fourth respondent was disqualified is for the reasons that check slip accompanied to the tender was not uploaded is erroneous for the reason condition (x) of the NIT clearly stated that any other condition regarding receipt of tenders in conventional method appearing in the tender documents may please be treated is not applicable to the tender submitted in e-procurement. In view of the same, the reliance placed by the learned counsel for the petitioner that check slip which contemplates that all experience certificates shall be issued by officer not below the rank of Executive Engineer and countersigned cannot be made applicable to the tender submitted on e-procurement . In view of the same, report submitted by the Superintendent Engineer was not in proper perspective which was taken note by the tender committee in evaluating the tenders. It is not the case of the petitioner that such conditions were introduced with a malafide intention and tailor-made to suit a particular tenderer depriving other tenderers from participation which results in discrimination.

In view of the same, awarding of work to the fourth respondent after opening the financial bid does not suffer from any incurable infirmities warranting interference by this court.

The writ petition fails and it is accordingly dismissed. No costs.

6-10-2004

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To

1 The Government of A.P., rep. by its Special Chief Secretary,
Panchayat Raj,Secretariat,Hyderabad.
2 The Chief Engineer (RWS), Panchayat Raj, SRTGN Bhavan,
Erramanzil Colony, Hyderabad.
3 The Superintending Engineer (RWS), Panchayat Raj, Vijayawada, Krishna District.

4. 2 CCs to the Govt., Pleader for Panchayat Raj, High Court Building, Hyderabad (OUT)

5. 2 CD copies.